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DATE: May 18, 2004**OFFICIAL**

TO:
Name: Examiner Herbert J. Lilling, USPTO
Art Unit 1651

Fax No.: 703-872-9306

FROM:
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Re: Serial No. 10/009,316 filed May 2, 2002
Attorney's Docket: C 2178 PCT/US

• Restriction Requirement Response (2 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/009,316 Confirmation No. 6946
Applicant : Bornscheuer et al.
Filed : May 2, 2002
TC/A.U. : 1651
Examiner : Herbert J. Lilling

Docket No. : C 2178 PCT/US
Customer No.: 23657

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RESPONSE TO RESTRICTION REQUIREMENT

Sir:

This paper is in response to the Examiner's Restriction Requirement dated April 20, 2004, in the above-identified application.

Remarks/Arguments begin on page 2 of this paper.

Appl. No.: 10/009,316
Response dated May 18, 2004
Reply to Office action of April 20, 2004

Remarks/Arguments

The Examiner has made the claimed invention subject to an election of species requirement. Apparently, though it is by no means clear from the Office Action, the Examiner is contending that a specific sugar derivative and a specific carboxylic acid must be elected. Applicant respectfully submits that the election of species requirement is improper for the following reasons.

It is extremely well settled that in order for an Examiner to make an election of species requirement under 35 U.S.C. § 121, the Examiner must show that said invention pertaining to each species is "independent and distinct". The Examiner, however, has failed to make such a showing or, for that matter, even such an allegation. Instead, the Examiner has merely alleged that the sugar derivative and carboxylic acid are "patentably distinct". Unless and until the Examiner can show, rather than allege, that some or all of the species presently claimed are **independent and distinct**, then the election of species requirement is deemed to be improper.

The requirement is thus respectfully traversed and reconsideration and withdrawal thereof is requested. However, in order to comply with the requirement of Rule 142, Applicants are provisionally electing the following species: ascorbic acid and palmitic acid, which read on claims 14-17 and 19-26, with traverse, for further examination on the merits.

The Examiner is requested to telephone the undersigned attorney if any further questions remain which can be resolved by a telephone interview.

Respectfully submitted,



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